

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
G & B SHAKE AND SHINGLE CO., INC., )  
Appellant, )  
vs. )  
OLYMPIC AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

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PCHB No. 486

FINAL FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

THIS MATTER being an appeal of a \$150 civil penalty for an alleged smoke emission violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 1st day of April, 1974, at Lacey, Washington; and appellant G & B Shake and Shingle Co., Inc. appearing through its owner, Virginia A. Schneider, and respondent Olympic Air Pollution Control Authority appearing through i attorney Fred D. Gentry; and Board members present at the hearing being Walt Woodward and W. A. Gissberg; and the Board having considered the sworn testimony, exhibits, records and files herein and having entered

1 on the 5th day of April, 1974, its proposed Findings of Fact, Conclusions  
2 and Order; and the Board having served said proposed Findings,  
3 Conclusions and Order upon all parties herein by certified mail, return  
4 receipt requested and twenty days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,  
6 Conclusions and Order; and the Board being fully advised in the premises;  
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
9 Findings of Fact, Conclusions and Order, dated the 5th day of April,  
10 1974, and incorporated by this reference herein and attached hereto as  
11 Exhibit A, are adopted and hereby entered as the Board's Final Findings  
12 of Fact, Conclusions and Order herein.

13 DONE at Lacey, Washington, this 7th day of May, 1974.

14 POLLUTION CONTROL HEARINGS BOARD

15 *Walt Woodward*  
16 WALT WOODWARD, Chairman

17 *W. A. Gissberg*  
18 W. A. GISSBERG, Member

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

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IN THE MATTER OF  
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CONTROL AUTHORITY,  
Respondent.

PCHB No. 486

## FINDINGS OF FACT, CONCLUSIONS AND ORDER

This matter, the appeal of a \$150 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and W. A. Gissberg) in the Board's office at Lacey, Washington, at 11:00 a.m., April 1, 1974.

Appellant was represented by its owner, Virginia A. Schneider; respondent appeared through Fred D. Gentry. Robert H. Lewis, Tacoma court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

**EXHIBIT A**

1 From testimony heard and exhibits examined, the Pollution Control  
2 Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Between 8:55 and 9:33 a.m. on August 8, 1973, from a wood-waste  
6 burner owned and operated by appellant in Clallam County, Washington,  
7 there was a continuous smoke emission darker in shade than No. 3 on  
8 the Ringelmann Chart.

9 II.

10 It was contended, but not proven, that the burner had been started  
11 for the day's operation sometime between 8:00 and 8:30 a.m. on  
12 August 8, 1973.

13 III.

14 The incident, observed by a trained and certified smoke-reading  
15 inspector on respondent's staff, resulted in appellant being served  
16 with a notice of violation of Section 10.01 of respondent's  
17 Regulation I and a civil penalty of \$150 in connection therewith, which  
18 is the subject of this appeal.

19 IV.

20 Appellant contends, but did not prove, that on August 8, 1973 it was  
21 awaiting delivery of a \$324.00 sump pump which, when installed and  
22 operating, enables the burner to operate without smoke emissions in  
23 violation of Regulation I.

24 V.

25 Section 10.01 of respondent's Regulation I makes it unlawful to  
26 cause or allow a smoke emission from a wood-waste burner darker in  
27 shade than No. 2 on the Ringelmann Chart for more than 15 minutes in

1 any eight-hour period. Section 10.03 of respondent's Regulation I  
2 provides that the above limits may be exceeded without violation for  
3 not more than 60 minutes in any eight-hour period during startup of  
4 fire in a wood-waste burner. Section 3.27 of respondent's Regulation I  
5 authorizes respondent to levy a civil penalty of not more than \$250.00  
6 for each violation of respondent's Regulation I.

7 VI.

8 Any Conclusion of Law which may be deemed to be a Finding of Fact  
9 herewith is adopted as same.

10 From these Findings, the Pollution Control Hearings Board comes  
11 to these

12 CONCLUSIONS

13 I.

14 The preponderance of testimony convinces the Board that appellant  
15 was in violation of Section 10.01 of respondent's Regulation I as  
16 contended in this matter.

17 II.

18 Appellant, since the instant matter, has purchased at a substantial  
19 cost, a sump pump which, when operated, appears to be keeping the  
20 instant wood-waste burner in compliance with Regulation I. Inasmuch as  
21 compliance is of greater importance in attaining clean air than the  
22 collection of civil penalties, appellant is entitled to some leniency  
23 beyond that already shown by respondent in the instant penalty.

24 III.

25 Any Finding of Fact which may be deemed a Conclusion of Law is  
26 herewith adopted as same.

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 Therefore, the Pollution Control Hearings Board issues this

2 ORDER

3 The appeal is denied, but appellant is directed to pay respondent  
4 \$75.00, the balance of \$75.00 to be suspended pending no similar  
5 violation for a period of six months from the date of this Order.

6 DONE at Lacey, Washington this 5<sup>th</sup> day of April, 1974.

7 POLLUTION CONTROL HEARINGS BOARD

8 Walt Woodward  
9 WALT WOODWARD, Chairman

10 W. A. Gissberg  
11 W. A. GISSBERG, Member

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26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER

1 herein by certified mail, return receipt requested and twenty days  
2 having elapsed from said service; and

3 The Board having received no exceptions to said proposed Findings,  
4 Conclusions and Order; and the Board being fully advised in the premises;  
5 now therefore,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
7 Findings of Fact, Conclusions of Law and Order, dated the 20th day of  
8 March, 1974, and incorporated by this reference herein and attached  
9 hereto as Exhibit A, are adopted and hereby entered as the Board's Final  
10 Findings of Fact, Conclusions of Law and Order herein.

11 DONE at Lacey, Washington, this 16<sup>th</sup> day of April, 1974.

12 POLLUTION CONTROL HEARINGS BOARD

13   
14 W. A. GISSBERG, Member

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17 MARY ELLEN McCAFFREE, Member

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